113-648

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 183.

BENJAMIN F. CAMP, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED FEBRUARY 15, 1882.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 I. *Petition. Filed April* 13, 1869.

In the Court of Claims. December Term, 1868.

BENJAMIN F. CAMP
versus
THE UNITED STATES. } No. 5934.

To the Honorable Court of Claims:

The petition of Benjamin F. Camp, a citizen of the United States, respectfully represents: That in the month of April, 1864, one Ralph S. Hart was supervising special agent of the United States Treasury for the district which included so much of the State of Mississippi as was within the lines of military occupation of the United States. That at that time there was a certain lot of cotton, amounting to 572 bales, stored on Buffalo Bayou, in the county of Wilkinson, in the State of Mississippi, which cotton was claimed by the United States authorities as captured or abandoned property. That the said Ralph S. Hart was charged with the duty of collecting the
2 said cotton, reducing it to the possession of the United States and disposing of it in conformity with the acts of Congress in that case made and provided; and for that purpose the said Hart was authorized to enter into contracts on behalf of the United States with individuals to secure the said cotton by agreeing to pay for such services a portion of the cotton which should be recovered by any such persons.

Your petitioner further shows that the precise situation of said cotton was then unknown. That there was no known route or means of access to it. That although it was within the geographical limits of the lines of military occupation said lines were so extended that they were frequently interrupted and raided upon by the forces of the enemy in the vicinity of the place where this cotton was supposed to be stored.

And your petitioner saith that for these reasons the service of collecting and bringing in this cotton was extremely hazardous, one attended with great personal danger, subjecting the party who engaged in it to serious risk of loss of life or of capture and
3 severe treatment by the military forces of the enemy or of volunteer organizations among the hostile inhabitants.

Your petitioner saith that the possession of said cotton was in danger of being lost to the United States by reason of these facts, when the said Hart, acting for and on behalf of the United States, on the 20th of April, A. D. 1864, agreed with your petitioner that your petitioner should proceed to search for the said cotton, and if found to take possession of the same and deliver it to the United States Treasury agent at Natchez, Mississippi, and in consideration therefor the said Hart agreed to give to your petitioner one-fourth part of all of the said cotton so recovered and delivered at Natchez as aforesaid.

And your petitioner further saith that in pursuance of the said contract he procured a steamboat and proceeded up Buffalo Bayou in search of said cotton, and petitioner saith that at the great risk of

his life and safety and also at the imminent risk of losing his
4 said vessel he ascertained the place of the storage of said cotton and succeeded in obtaining possession of it, and removed it to Natchez, where he delivered it to the agent of the Treasury Department, and petitioner saith that he in all respects complied with the terms of said contract on his behalf to be performed, and that he brought out and delivered to the Treasury agent at Natchez, as aforesaid, five hundred and seventy-two bales of cotton, whereby he became entitled to receive one-fourth of the said cotton or of its proceeds. But petitioner saith that the whole of the said cotton was forwarded by the United States authorities to St. Louis, Missouri, where it was claimed by one Miles Sells, as administrator of John K. Elgee, and replevined by him from one O. S. Lovell, a Treasury agent, who held the same for the United States. Whereupon a stipulation was entered into in said replevin suit, in pursuance of which the said cotton was sold and the proceeds invested in interest-bearing securities to abide the event of that suit. And petitioner saith that such proceedings were afterwards had that a final
5 judgment was entered in said suit in favor of the defendant, which judgment has been affirmed by the Supreme Court of the United States on appeal. That the said securities have since been sold and the proceeds thereof have been paid into the Treasury of the United States, and that said proceeds of the said cotton amount to the sum of $500,000.00.

Your petitioner saith that his claim was admitted and recognized by the Secretary of Treasury, and that payments were made to him twice on account thereof, once the sum of $30,000, and once the sum of $15,000.00; but that the Secretary of the Treasury declined to make a full settlement with him while the title of the United States was in jeopardy by reason of the said replevin suit. That soon after the said replevin suit had been decided the joint resolution of Congress approved ———, required the Secretary of the Treasury to cover into the Treasury all the proceeds of captured and abandoned property, which has been done.

Wherefore your petitioner saith that there is due to him
6 from the United States the sum of $80,000, as follows:

UNITED STATES TO B. F. CAMP,	DR.	CR.
One-fourth of proceeds of 572 bales of cotton	$125,000 00	
By cash		$30,000 00
"		15,000 00
		45,000 00
Balance due	$80,000 00	

Your petitioner further shows that he has at all times borne true allegiance to the Government of the United States, and that he has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and he prays the judgment of this honorable court for the said sum of eighty thousand

dollars ($80,000.00), and for such other and further relief as the nature of the case may show he is entitled to.

(Claimant will sign here.) BENJ. F. CAMP.

DISTRICT OF COLUMBIA, } *ss:*
County of Washington, }

7 B. F. Camp, being duly sworn, deposeth: That he is the claimant in the foregoing petition; that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, except as in said petition is stated; that claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsetts, and that he believes the facts as stated in said petition are true

BENJ. F. CAMP.

Sworn and subscribed to before me, a notary public in and for said county and district.

Witness my hand and notarial seal, this tenth day of April, A. D. 1869.

[SEAL.] N. CALLAN, *Notary Public.*

Claimant'- address is ——.

Claimant'- solicitors, Hughes, Denver & Peck, 258 G Street, Washington, District of Columbia.

8 II. *Traverse. Filed May* 23, 1869.

And the said defendants, by their attorney general, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of eighty thousand dollars ($80,000), the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

T. LYLE DICKEY,
Assistant Attorney General.

9 III. *Motion for Leave to Include Certain Matters in the Record on Appeal, filed Jan'y* 17, 1881, *and Allowance of said Motion.*

The claimant, by his attorney, now comes and moves that in making up the record in this case for the purpose of an appeal there be included the following matter:

1st. The motion filed by Mr. Hale, for the defendant, on the 12th

of October, 1869, to require the claimant to interplead in certain other causes then pending in this court.

2nd. The opinion of the court on said motion, and the concurring opinion of Casey, J

C. F. PECK,
Att'y for Claimant.

[Endorsed:] Allowed. C. C. Nott. Jan. 17, 1881.

10 IV. *Motion for Consolidation and Interpleader. Filed October 12, 1869.*

Benjamin F. Camp *vs.* The United States.	No. 5934.
Cornelius V. Woodruff and Adolphe Bouchard *vs.* The United States.	No. 2157.
Julia A. Nutt *vs.* The United States.	No. 3496.
Mary Ann Wells and others *vs.* The United States	No. 3152.
Archibald Montgomery *vs.* The United States.	No. 3223.

11 The defendants, by Mr. Hale, special counsel, move for an an order consolidating the first above-entitled cause with the other causes above entitled, and requiring the claimant in the first above-entitled cause to interplead with the claimants in the other causes respectively above entitled, all said claims being upon the same identical moneys and fund, and conflicting.

12 Oct., 1869. ROB. S. HALE,
Special Counsel, &c.

V. *Opinion of the Court and Concurring Opinion on the Foregoing Motion.*

NOTT, J., delivered the opinion of the court:

This is a motion, in the nature of a writ of interpleader, made by the defendants.

Woodruff's case is a proceeding under the abandoned and captured property act to recover the net proceeds of specified property held in trust by the defendants for the benefit of the loyal owners thereof. Since the recent decision of the Supreme Court in
12 Nelson Anderson's case I may speak more decidedly than I have felt at liberty to speak before, and say that it is a suit

in equity, relating to a fund in equity, and brought to enforce a trust.

Camp's case is an action at law founded on a contract for work and services rendered. It was brought the 13th April, 1869, after all suits under the abandoned or captured property act were barred by the express words of the statute. The claimant does not profess to have been the owner of the captured property, nor to be entitled to the benefits of the trust.

Each party also disclaims an interest in the same thing. Woodruff rests upon his equity in the proceeds of the captured property, and declines to take issue with Camp. Camp stands upon the terms of his express contract, and maintains his right to recover, whether Woodruff fails or succeeds. His reference to the captured property is merely to fix the measure of his damages. Each claimant holds the defendants to a distinct and different liability. To the one they stand as trustees; to the other as contractors; to neither as stakeholders. Therefore there is no ground for interpleader, inasmuch as the actions are different in their nature, and the defendants occupy a different attitude toward
13 each claimant.

But it by no means follows that the defendants are without redress. The suit of Camp is in effect an action brought against trustees for services rendered to the trust estate. The *cestui que* trust cannot be required to litigate the claim in the stead of the trustees, but the trustees cannot be compelled to close up the trust estate with this suit against themselves or the estate outstanding. Camp has brought his action before the trust estate is actually closed, though not within the two years prescribed by law for closing it, and it may be that he has a good and valid claim against the trust estate. The trustee should not be required to pay over all the proceeds to the *cestui que* trust and then be held personally liable to Camp, nor should Camp be left without redress if his claim be valid and his suit be not barred.

It is, perhaps, needless to add that this opinion does not adjudicate either case upon its own merits, but merely deals with them as they appear upon this motion.

The motion to interplead must be denied. But when the case of Woodruff shall be tried, if it shall then appear that this case of
14 Camp is still pending, proceedings upon the judgment will be stayed, or a decree directing payment of a part of the proceeds will be rendered, with leave to apply for an order directing the payment of the residue, if any, when the estate shall be finally closed.

CASEY, Ch. J., concurring:

If the cotton seized, and for which compensation is claimed, belonged to loyal persons, neither the Secretary of the Treasury nor any other officer had any right to take it. And a contract to do that which the law did not authorize, but its general policy forbade, was illegal and void. If the cotton belonged to rebels the proceeds will be unaffected by the suits, and will remain in the Treasury. But in neither event will they be increased or diminished by the result in

this case. This suit is on a contract, and not for any part of those proceeds. It ought not, therefore, to be linked with causes to which it bears no legal relations, and by the decisions in which it will be unaffected. I think the rule ought to be discharged.

15 VI. *Order of the Court Denying the Motion to Consolidate and Interplead.*

At a Court of Claims, held in the city of Washington, on the 22nd day of March, 1870, in the matter of the motion to consolidate this case with that of Woodruff and others and other cases included in said motion, submitted on the 31st of January, 1870, by Mr. Hale, Judge Nott delivered the opinion of the court denying the motion.

16 VII. *Findings of Fact and Conclusion of Law. Filed June 7, 1880.*

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I.

In the months of January, February, March, and April, 1864, one Ralph S. Hart was the assistant special agent of the Treasury Department for the district of Natchez, in the State of Mississippi.

II.

There was at that time stored on the banks of Buffalo Bayou, in the county of Adams and State of Mississippi, within said district, about twenty-two hundred bales of cotton, the property of one John K. Elgee, a resident of Alexandria, in the State of Louisiana, then within the lines of rebel occupation.

III.

On or about the 1st April, 1864, the agent, Hart, had known of the existence and location of the cotton before described for about two months. About the 1st April he entered into an arrangement with the claimant, not in writing, whereby it was understood and agreed between them that the claimant should bring out the Elgee cotton, and turn it over to the Government through the agent in Natchez. The agent was then to represent the arrangement and business, whatever it might be, to the Secretary of the Treasury, and was likewise to represent that he had assured the claimant, by the arrangement, that the Secretary would allow to him 25 per cent. of the proceeds of the cotton at least. No bond of indemnity was given by the claimant. By the arrangement the claimant was also to pay to the agent, Hart, out of the proceeds, when received by him, from $5,000 to $10,000, provided that the Secretary of the Treasury should see no impropriety in his, the agent's, accepting from the claimant a portion of the proceeds.

IV.

At the time that the before-described arrangement was entered into by the agent, Hart, and the claimant, the latter held the written authorities annexed to these findings as a part thereof, authorizing him to collect cotton, which authorities had been issued to him about the time of their respective dates, but which had not been understood or intended to be applicable to the Elgee cotton. (Exhibits A, B, C, D, E, post.)

17 V.

On March 15, 1864, said Hart executed and delivered to one John Lockwood the following paper, which related to said Elgee cotton:

OFFICE ASS'T SPECIAL AGENT TREASURY DEP'T,
NATCHEZ, MISS., *March* 15, 1864.

To JOHN LOCKWOOD, Esq.,
Of Milwaukee, Wisconsin:

You are authorized and directed by me, in case any attempt shall be made by any one, whether he hold an authority from me to remove the lot of cotton on Old or Buffalo rivers, or whether he do not hold an authority, to seize said cotton and bring it to Natchez, and revoke, in my name and by my authority, any such authority, and, if necessary, to cause the arrest of any such person or persons.

You are furthermore authorized to direct the operations and guide the movement of any military that may be in service in the getting out of said cotton, and to seize and bring to Natchez any and all steamboats and persons attempting to carry the same, or any portion thereof, elsewhere.

R. S. HART,
Ass't Sp'l Ag't Tr'y Dep't, Natchez Dist.

I solemnly swear that I will faithfully, to the best of my ability, execute the within trust.

JOHN LOCKWOOD.

Subscribed and sworn to before me, the day and year within named.
R. S. HART,
Ass't Sp'l Ag't Tr'y Dep't, Natchez Dist.

VI.

On or about March 31, 1864, the claimant, representing himself as a Treasury agent, engaged the services of the transport boat Venango, which, under the protection of the gunboat Champion, ascended the said Buffalo Bayou, took on board 572 bales of the Elgee cotton, and brought the same to Natchez, where the cotton was seized by General Tuttle, commanding the military force there, on suspicion that the claimant intended to appropriate it to himslf, and was placed under guard in the Government yard.

The claimant thereupon sent two communications, the one to the agent, Hart, and the other to William P. Mellen, the supervising

special agent of the Treasury for the department embracing the district of Natchez, which are annexed to and form part of these findings. (Exhibits F, G.)

VII.

The cotton, by direction of the supervising special agent of the Treasury, was forwarded to Saint Louis. After it reached Saint Louis, the owner, Elgee, brought an action of replevin in the circuit court of Saint Louis county to recover the possession of it from O. S. Lovell, the agent of the Treasury Department, to whom it had been consigned at that place. The United States took charge of the defense of said action, and on the 22d of June, 1864, a stipulation was entered into in reference to said action by the Secretary of the Treasury, the Solicitor of the Treasury, and the plaintiff, Elgee, which is annexed to and forms part of these findings. (Exhibit H.)

VIII.

In pursuance of the said stipulation, the said cotton was sold and the proceeds thereof deposited as therein provided, and the said action was removed to the circuit court of the United States for the district of Missouri. Thereafter a decision was rendered by the said United States circuit court in favor of the defendant. From said judgment an appeal was taken to the United States Supreme Court, where said judgment was affirmed.

18 IX.

The claimant presented his claim for compensation to the Treasury Department, and the said department, by the Assistant Secretary of the Treasury, on the 6th of December, 1865, directed the commissioner of customs to state an account and make a requisition in favor of claimant "for the sum of $30,000, being part of the proceeds of certain cotton known as the Elgee cotton, collected as captured or abandoned property by said Camp, for an interest therein; said sum being an advance to said Camp on account of his expenditures in relation to said cotton." And said sum of $30,000 was, in pursuance of said order, paid to the claimant, he, at the same time, giving a bond of indemnity therefor. (Exhibits I and J.)

And on the 7th of March, 1866, the Assistant Secretary of the Treasury directed the commissioner of customs, who was charged with that duty, to state an account and make a requisition in favor of William Prescott Smith (who had acquired a joint interest with claimant in said claim) for the sum of $15,000, being part of the proceeds of the said cotton "collected as captured or abandoned property by B. F. Camp for an interest therein; said sum being an advance to said Smith on account of his joint interest with said Camp in said cotton." And said sum of $15,000 was, in pursuance of said order, paid to the said Smith, he, at the same time, giving a bond of indemnity therefor. (Exhibits K and L.)

X.

Prior to the 20th August, 1868, the heirs and representatives of the said John K. Elgee, he being dead, brought a suit in this court under the abandoned or captured property act to recover the proceeds of the said cotton, which suit was pending and undetermined when the claimant commenced the present action.

XI.

On the 2d day of May, 1864, the said John K. Elgee took the amnesty oath prescribed by the proclamation of President Lincoln of the 8th of December, 1863. His claim to the said cotton was established and his loyalty proved under the requirements of the acts relating to abandoned or captured property by force of the amnesty proclamations, and not otherwise, and the said cotton was, as to ownership and condition, liable to seizure when taken by Camp.

XII.

The gross proceeds of the sale of said cotton were		$381,428 27
From these were deducted for freight-charges and expenses of and prior to said sales	$45,349 12	
Legal expenses	16,000 00	
Amount paid B. F. Camp as aforesaid	30,000 00	
Amount paid W. P. Smith as aforesaid	15,000 00	
		106,349 12
Net proceeds		275,079 15
Interest on bonds as per stipulation		91,091 68
Net amount paid into the Treasury		366,170 83

The said fund was, in pursuance of the joint resolution of Congress, approved March 30, 1868, covered into the Treasury.

19 XIII.

Twenty-five per cent. of the proceeds of captured cotton was the remuneration ordinarily allowed and paid by the Treasury Department to contractors under the Treasury regulations for collecting and bringing in such property.

Exhibits Referred to in the Findings of Fact.

EXHIBIT A.

OFFICE ASS'T SPECIAL AGENT TREASURY DEP'T,
NATCHEZ, MISS., *January* 26, 1864.

To any officer of any United States gunboat, or any of the U. S. land forces:

These are to authorize Benjamin F. Camp, of New York city, to collect & take possession of any abandoned cotton or C. S. A. cotton,

or other abandoned products of the country, which he may find within the Natchez district of the 1st agency, and to transport the same to Natchez, but not elsewhere, and deliver the same into the possession of the undersigned; and also to request any gunboat officer, or any officer in the land service of the United States, to furnish him such incidental protection in the fulfillment of these objects as may be consistent with the service.

R. S. HART,
Ass't Special Ag't Tr'y Dep'm't, Natchez Dist., 1st Agency.

(Any cotton.)

EXHIBIT B.

OFFICE ASS'T SPECIAL AGENT, TREASURY DEP'T,
NATCHEZ, MISS., *Jan'y* 28, 1864.

To whom it may concern:

These are to authorize B. F. Camp, Esq., of the city of N. York, the bearer thereof, in my behalf as assistant special of the Tr'y Dep't for the Natchez district of the first agency, to seize and cause to be brought to Natchez any and all lots of cotton which he may find within said district in the hands of any purchaser bearing the marks C. S. A., or other Confederate cotton, and to cause the same to be forwarded to Natchez, and there to be deposited in the Gov't cotton-yard, subject to the Treasury regulations, provided he shall be satisfied that the same was procured in said district, and that it is being transported, or is meant and intended to be transported, from within said district in fraud of the United States and of the Treasury Dep't.

R. S. HART,
Ass't Spe'l Ag't, Natchez.

EXHIBIT C.

NATCHEZ, *March* 5, '64.

Admiral D. D. PORTER, *United States Navy.*

SIR: The bearer, Hon. B. F. Camp, of New York, has been appointed by me and authorized over my signature to collect C. S. A. and abandoned cotton & other abandoned property which he may find anywhere within the Natchez district, & to transport the same to Natchez. Mr. Camp is a gentleman standing high with the authorities at Washington, and any aid you may be able to afford him, consistent with the service, will be duly appreciated, not only by the undersigned, but by the Washington authorities, I doubt not.

Very resp'y, &c.,
R. S. HART,
Tr'y Ag't, Natchez.

EXHIBIT D.

OFFICE ASS'T SPECIAL AGENT, TREASURY DEP'T,
NATCHEZ, MISS., *Jan'y* 24, 1864.

I have no objections to the gunboats protecting the shipment of all and any cotton lying in my, or near the Natchez, district upon

board my steamers, provided the steamer is conveyed to Natchez. On the contrary, it is my desire that such protection be given. But the cotton must come to Natchez, & be reported here, & for this I will hold the gunboat protecting it liable. I refer to private cotton, or cotton purchased on private account. Let all such be brought to Natchez, provided it is shipped within the Natchez district, which extends from the mouth of the Big Black to the mouth of Red river, on both sides of the Mississippi.

This is meant for B. F. Camp, Esq., the bearer, and refers to cotton protected for him on his request only.

R. S. HART,
Ass't Sp'l Ag't Tr'ry Dep't, Military Dist., 1st Agency.

20 EXHIBIT E.

OFFICE ASS'T SPECIAL AG'T TREASURY DEP'T,
NATCHEZ, MISS., *Feb.* 26, 1864.

The bearer, the Hon. B. F. Camp, of New York, is authorized to collect, receive, ship, and transport to Natchez, but not elsewhere, any and all C. S. A. or abandoned cotton which he may discover within the Natchez district, to be turned over at Natchez to the Government of the United States, to wit, to the undersigned, agent of the Treasury Department, with any other aban'ed property he may discover.

And these are to request the aid of all and any officers or officer or soldier of the United States navy or army to aid him therein.

He is further authorized to seize any vessel or vessels which he may find laden in whole or in part with C. S. A. or abandoned cotton, and bring any and all such vessels and their cargoes to Natchez, there to detain the same until the undersigned shall have opportunity to inspect such cargoes, and determine whether they or any part thereof are subject to seizure as C. S. A. or abandoned cotton.

R. S. HART,
Ass't Sp'l Ag't Treas'y Dep't and Acting Collector of Customs, Natchez.

(Indorsements on Exhibit E.)

This authority is limited to thirty days.
Feb'y 26, '64.

R. S. HART,
Ass't Sp'l Ag't.

MARCH 15.

Renewed for thirty days from March 26th.

R. S. HART,
Ass't Sp'l Ag't Tr'y Dep't, Natchez Dist.

Personally comes before the undersigned Tr'y ag't the within-named Benjamin F. Camp, and makes oath in due form of law that he will faithfully execute the within trust according to the best of his skill & understanding.

B. F. CAMP.

Subscribed and sworn to before me, this 15th March, 1864.

(Indorsed in blue pencil:)

H'DQ'RS R. R. EXPRESS,
STEAMER CLARA BELLE, *Mar.* 12, '69.

Mr. B. F. Camp has authority to —d Red river for purposes contained in the within instructions.

A. J. SMITH,
Brig. Gen., Army.

This is satisfactory.

C. DOMINY,
U. S. S. General Bragg.

EXHIBIT F.

NATCHEZ, *April 9th.*

R. S. HART, *Ass't Sp'l Ag't, Treas'y Dep't.*

SIR: The five hundred and seventy-two bales of cotton collected under your authority as abandoned cotton, and brought to this city upon the steamer Venango, I now turn over to you as the agent for abandoned property of the Gov't.

Yours, resp'ly, B. F. CAMP.

EXHIBIT G.

NATCHEZ, *April 7th*, 1864.

Hon. WM. P. MELLEN,
Supervising Special Agent Treasury Department, Cincinnati, Ohio.

SIR: Under special authority issued by R. S. Hart, Esq., assistant special agent of the Natchez district, I proceeded to Fort Adams, and on the morning of the 31st of March I ascended a stream of water known as Buffalo creek, in said district, and took on board the steamer Venango, accompanied by the gunboat Champion, five hundred and seventy-two bales of abandoned cotton, known as the Elgee and Chambers cotton; said cotton having been specialty named in the authority given by R. S. Hart, Esq., in the orders to collect the cotton and bring it to Natchez. I performed that duty strictly in accordance with his instructions, and brought the property, which, beyond all doubt or question of doubt, belongs to the Government of the United States.

21 When I arrived here with the property I requested that an immediate account be taken of the property and forwarded at once to you at Cincinnati. But, to my great surprise, I found R. S. Hart, Esq., unwilling to act until certain parties professing to have claims against the property should have a hearing. Knowing the worthlessness of their claim, and being very familiar with the enormous frauds being practiced on the Government here and elsewhere, I insisted that the cotton be sent you for your decision in the matter. This Hart objected to, and thought I was too hasty in the matter. Whether I was or not I leave to you to judge after you

read the subjoined statement of the trickery now trying to be practiced.

A man by the name of Nutt claims to have bought the cotton in October last, at £15 sterling per bale, of Elgee and Chambers, both well-known rebels, and both having lived in the so-called Confederacy since the war commenced. Elgee, one of its former owners, having signed the ordinance of secession to carry this State out of the Union, abandoned his plantations in Mississippi, and they have been rented three times by the Government as abandoned plantations. This of itself, I think, would make it abandoned cotton, to say nothing of the visitation, and paying for it in sterling; but, on the morning of the 1st of April, at least two weeks after —— was given to collect this special lot of cotton, a bill of sale was made out to Mr. George Field (a former commissioner of renting plantations) for the same, and, to my great surprise, Mr. Field is making himself very busy in trying to establish a title to it, the justice of which you can readily see.

In addition to Mr. Field, General Tuttle is also making himself very busy in trying to defeat the Government from getting this property, having told me this morning at the Treasury Department that I must have known it was private property. My reply was that the Treasury Department was competent to judge of that matter. This, I presume, offended his highness, and this evening I learned from Mr. Hart that there is a strong probability of my being arrested. Of course, I do not desire to be arrested, but I assure you I am ready for anything that comes, knowing that I am right in protecting the Government from the robberies now trying to be practiced upon it.

So disgusted am I, either with the incompetency and inefficiency of Hart, or his collusion with the parties, that I was forced to tell him that his position was one against the Government, and consequently a condemnation of himself.

Now, sir, what do you think of a trio composed of a commanding general of the United States forces and the United States Commissioner Field refusing to have the matter settled by the chief of the first Treasury agency? Of course you see I am making the fight alone, but mean to maintain the rights of the Government let what come.

If this vast amount of property is worth saving, I hope you will come to my relief immediately. The parties are perfectly desperate in their efforts to obtain the property. I also ought to state that I agreed that the claimants should follow the property to Cincinnati, and that I would keep the property on board the steamer twelve hours in give them ample time to enter their protest, and I would pay their expenses up and down. This was declined. I also agreed that if they would pay all the expenses incurred upon the property in getting it to Natchez, that I would I turn the property over to Judge Hart until you had an opportunity to investigate and settle the matter yourself. This was also declined, all parties knowing too well that you would soon dispose of it in favor of the Govern-

ment, and that any other course would be fraud and robbery of the Government.

Yours, very respectfully,

B. F. CAMP.

EXHIBIT H.

Whereas an action was brought in the circuit court of St. Louis county and State of Missouri, on the eleventh day of June, eighteen hundred and sixty-four, by John K. Elgee, against Oliver Lovell, for the recovery of five hundred and seventy-two bales of cotton, which cotton is claimed by the United States as abandoned property under the act of Congress approved March 12, 1863, but which the said Elgee claims as his property, wrongfully taken and detained from him by the agents of the United States; and

Whereas it is desired that said cotton should be forthwith sold to save risk and expenses connected therewith, but without prejudice to any claims set up in respect thereto: Now, therefore,

It is agreed by and between the Solicitor of the Treasury of the United States, of the one part, herein acting with the approval of the Secretary of the Treasury, and John K. Elgee, of the other part, as follows:

First. That said action shall without delay be removed to the circuit court of the United States for the district of Missouri by said Lovell under the provisions of the act of Congress approved March 3d, 1863.

Second. Said cotton shall be sold by the agent of the Treasury Department forthwith at St. Louis at auction to the highest
22 bidder for cash, at which sale the agents and attorneys of said Elgee shall be present and make public announcement that between said Elgee and the United States the matters of difference in respect to said cotton have been so arranged that neither said Elgee nor any person by him authorized will assert against any purchaser thereof any claim on his part to said cotton.

Third. From the money received from said sale enough shall be reserved and applied by the agent of the Treasury Department to pay such actual and reasonable expenses connected with the case and sale of said cotton in St. Louis, and such freight on said cotton from Natchez to St. Louis, as may be agreed to by the agents or attorneys of said Elgee, or approved by the Secretary of the Treasury, and also such other expenses, if any, attending the transportation of said cotton to Natchez, and such storage and other expenses chargeable to said cotton at Natchez, as said agent of the Treasury Department shall consider proper and just: Provided, however, That said agent shall not pay any such expenses as mentioned in the last preceding clause until after the same shall be approved by the Secretary of the Treasury, which approval shall not be given until after reasonable opportunity shall be given by him to said Elgee or his attorney to be heard in opposition thereto.

Fourth. The remainder of the money received from the said sale

shall be invested in the bonds of the United States, known as "ten-forty bonds," with interest coupons, which bonds shall be immediately made up and sealed in a package, and such package shall be deposited with the assistant treasurer of the United States at St. Louis as a special deposit, subject to the order of the Solicitor of the Treasury, endorsed with the approval of the Secretary of the Treasury, for the following purposes and upon the following terms, to wit: Said package to remain as such special deposit in the hands of said assistant treasurer of the United States until the final determination of the said action brought by Elgee against Lovell, in being expressly agreed and understood by the parties hereto that upon such final determination of said cause, if it be in favor of said Elgee and against said Lovell, the said package shall be considered as standing in lieu of the five hundred and seventy-two bales of cotton, and if the judgment of the court be for the recovery by said Elgee of the said five hundred and seventy-two bales of cotton, or any part thereof, or for damages in lieu of the same, then the Solicitor of the Treasury shall order the said package, or such proportion of the bonds therein contained as shall be equivalent to the amount or proportion of said five hundred and seventy-two bales of cotton, or damages in lieu thereof, for which payment shall have been rendered as aforesaid, to be delivered to the said Elgee, or his authorized agents or his legal representatives, which order shall, in such cases, be approved as aforesaid, by said Secretary, and such delivery being made, shall be deemed to be the same as the delivery of said cotton, and shall be in full satisfaction of such judgment and of all damages awarded in said suit, whether equal in amount thereto or not, and also in full satisfaction of all claims of said Elgee against the United States, or any officer or employé thereof, arising out of or in respect to the said five hundred and seventy-two bales of cotton, or against any person who at any time had said cotton in possession, under authority of or under contract with the United States, or any of its officers, agents, or servants: Provided, That if such delivery shall be prevented by any action or proceeding at law or in equity in respect to said bonds or said Elgee's interest therein, to which said cotton would, if remaining unsold, have been legally subject, then the delivery by the Solicitor of the Treasury to said Elgee, or his representatives, of such order as above mentioned, approved by the Secretary as aforesaid, shall be deemed and taken to all intents and purposes as equivalent to the delivery of said bonds, or such portion thereof as shall be embraced therein, and shall have the like effect as the delivery of the bonds themselves, as hereinbefore stipulated.

Fifth. The said Solicitor of the Treasury, on his part, agrees that the said Lovell was, at the time of the issue and service of the writ of summons in said cause, in possession of the said five hundred and seventy-two bales of cotton as agent of the United States, and not otherwise; and further agrees that the fact of possession by him, as aforesaid, shall be admitted by said Lovell in said case on the record thereof.

In witness whereof the said parties have hereunto set their hands, this 22d day of June, 1864.

EDWARD JORDAN,
Solicitor of the Treasury.

Approved June 22d, 1864.

S. P. CHASE,
Secretary of the Treasury.
JOHN K. ELGEE,
By MILES SELLS,
Attorney in Fact.
GLOVER & SHIPLEY,
H. HITCHCOCK,
Attorneys and Counsel for Elgee.

23 EXHIBIT I.

TREASURY DEPARTMENT, *December* 6, 1865.

SIR: Please state an account and make a requisition in favor of Benjamin F. Camp upon F. E. Spinner, Treasury agent, to be paid from the proceeds of captured and abandoned property, for the sum of thirty thousand dollars ($30,000), being part of the proceeds of certain cotton, known as the Elgee cotton, collected as captured or abandoned property by said Camp, for an interest therein; said sum being an advance to said Camp on account of his expenditures in relation to said cotton; and he having given a bond, a copy of which is annexed, to repay said sum of thirty thousand dollars ($30,000) on demand of the Secretary of the Treasury whenever made.

WM. E. CHANDLER,
Ass't Sec'y.

N. SARGENT, Esq.,
Commissioner of Customs.

EXHIBIT J.

Know all men by these presents that we, B. F. Camp and William Prescott Smith, are held and firmly bound to the United States in the penal sum of sixty thousand dollars, for the payment whereof we bind ourselves, our executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this fifth day December, eighteen hundred and sixty-five.

The condition of the above obligation is such that, whereas B. F. Camp has this day received from the United States the sum of thirty thousand dollars, being part of the proceeds of certain cotton known as the "Elgee cotton," collected and sold as abandoned property, which said cotton was collected for the Government by said B. F. Camp for an interest therein, and which said sum of thirty thousand dollars has been delivered to said Camp as a part of his said interest for collecting said cotton; and whereas divers claims have been asserted to said cotton and its proceeds by sundry claimants, and especially by one Miles Sells, as the admisistrator of John K. Elgee, deceased:

Now, if the said B. F. Camp shall repay the said sum of thirty thousand dollars on demand of the Secretary of the Treasury of the United States whenever made, and fully indemnify the United States against all loss and damage by reason of the payment to him of said sum of money whenever thereunto requested by the Secretary of the Treasury, then this obligation to be void; otherwise to remain in full force.

BENJ. F. CAMP. [SEAL.]
WM. PRESCOTT SMITH. [SEAL.]

Witnesses:
M. A. CLANCY.
AARON JONES.

EXHIBIT K.

TREASURY DEPARTMENT, *March 7th*, 1866.

SIR: Please state an account and make requisition in favor of William Prescott Smith upon F. E. Spinner, special agent, to be paid from the proceeds of captured and abandoned property, for the sum of fifteen thousand dollars ($15,000), being part of the proceeds of certain cotton, known as the "Elgee cotton," collected as captured or abandoned property by B. F. Camp, for an interest therein; said sum being an advance to said Smith on account of his joint interest with said Camp in said cotton, and the said Smith having given a bond, a copy of which is annexed, approved by the Secretary, to repay said sum of fifteen thousand dollars (15,000) on demand of the Secretary of the Treasury whenever made.

WM. E. CHANDLER,
Assistant Secretary.

N. SARGENT, ESQ.,
Commissioner of Customs.

EXHIBIT L.

Know all men by these presents, that I, William Prescott Smith, am held and firmly bound to the United States in penal sum of thirty thousand dollars, for the payment whereof I bind myself, my executors and administrators, firmly by these presents. Sealed with my seal, and dated this seventh day of March, eighteen hundred and sixty-six.

The condition of the above obligation is such, that whereas
24 the said William Prescott Smith, who is jointly interested with B. F. Camp in the proceeds of cotton herein mentioned, has this day received from the United States the sum of fifteen thousand dollars, being part of the proceeds of certain cotton known as the "Elgee cotton," collected and sold as abandoned property, which said cotton was collected for the Government by said B. F. Camp for an interest therein, and which said sum of fifteen thousand dollars has been delivered to said Smith as a part of his interest in the contract for collecting said cotton; and whereas divers claims have been asserted to said cotton and its proceeds by sundry

claimants, and especially by one Miles Sells, as the administrator of John K. Elgee, deceased:

Now, if the said William Prescott Smith shall repay the said sum of fifteen thousand dollars on the demand of the Secretary of the Treasury of the United States, whenever made, and fully indemnify the United States against all loss and damage by reason of the payment to him of the said sum of money, whenever thereunto requested by the Secretary of the Treasury, then this obligation to be void; otherwise to remain in full force.

WM. PRESCOTT SMITH. [SEAL.]

Witnesses:
H. S. ALCOTT.
M. A. CLANCY.

And upon the foregoing findings of fact the court decides, as conclusion of law:

At the time of the bringing of the action the defendants were guilty of no breach of the claimant's alleged contract, and his petition should be dismissed.

VIII. *Opinion of the Court—June 7, 1880.*

NOTT, J., delivered the opinion of the court:

Under the regulations of the Treasury concerning abandoned or captured property and the decision of the Supreme Court in Whiteside's case (93 U. S. R., 247), the arrangement between the Treasury agent and the claimant, by virtue of which the seizure of the Elgee cotton was made, was utterly void. This was conceded by the claimant's counsel on the hearing and need not be discussed.

The question then arises upon the doctrine of ratification, which the claimant seeks to apply to the case.

If this had been an ordinary transaction between men, unquestionably the acceptance of the cotton which the claimant brought out, followed by the payment on account thereof and for an interest therein by the Secretary of the Treasury, would have been a ratification of the unauthorized agreement of the clearest and most unequivocal character. The cotton here never belonged to the claimant; he never had a valid lien upon it; his services were entirely voluntary. When he turned it over to the Government the had no right to retain it, and General Tuttle's seizure was, in effect, the Government's seizing its own property. Nevertheless, in private transactions, a similar condition of affairs is often found where there have been voluntary services performed, and there a clear and unequivocal ratification of the unauthorized contract by the principal, renders it obligatory as if it had been entered into by his authority. In this case the Assistant Secretary of the Treasury did not say in words that he ratified the special agent's agreement, but he did say that the payment which he made to the claimant was a "part of the proceeds" of the "Elgee cotton" "collected as captured or abandoned property by said Camp"; that the payment was "for an interest therein," and was "an advance to said Camp." With all of the

facts before the Department, this order of the Assistant Secretary undoubtedly was intended as a payment upon the original and only agreement under which the claimant had acted, and as a recognition of his, the claimant's, interest in the proceeds to the extent of at least 25 per cent. thereof. We can understand that there may have been such cases of voluntary service under unauthorized agreements where the Secretary of the Treasury deemed it to be for the honor of the Government to ratify the transactions of his agents, and we are not disposed to question his authority to do so.

What, then, was the agreement which was thus ratified?

It was not a general obligation to pay the claimant for his services. From the inception of the system authorized by the abandoned or captured property act to the present time these transactions have always been considered and treated by the legislative and executive branches of the Government as a business by itself, which was to be self-supporting and not to become a charge upon the general treasury. In law, as in fact, the agreement with the claimant was not a contract binding the Government to pay him for his services in collecting and bringing out cotton, but was simply an agreement to share the proceeds with him. His case is that of a man who agrees to grow a crop or chop wood or excavate ore for a designated portion of the crop, the wood, or the ore.

Such being the contract, what would constitute a breach by the defendants?

If I were to agree with a man to grow a crop on his land for a share of it, with the further condition that the whole should remain in his possession until sold by him for our joint benefit, it would doubtless be a breach for him to convert my share to his own use. But no breach could be imputed to him if the crop, including my portion, were taken from him by the process of a court in the suit of a third person; and if I, with a superior right or equity as to my portion, should stand by and allow the suit to go to judgment raising no objection and interposing no defense, I certainly should not be able to set up my own inaction as a ground for recovering damages from him. And this is substantially the condition of the claimant's case.

When the agreement with the assisstant Treasury agent was entered into, assuming it now to be valid, it may have been supposed by the parties that the cotton to be brought out would be quickly sold, and the net proceeds readily ascertained and easily apportioned. But hardly had the cotton come to the possession of the Government ere the former owner appeared, asserted his title, and invoked the process of a court to regain possession. The obligation of the Government to sell the cotton and share with the claimant in the proceeds was certainly suspended. As a part of that litigation, apparently with the assent of the claimant and certainly without objection by him, the Government did what, as custodian of the property and actual litigant in the suit, it certainly had a right to do—it entered into a stipulation which provided that the cotton should be sold, the proceeds be invested in bonds, the bonds

be substituted as the subject of litigation, and the litigation transferred to the United States courts.

The time when that litigation ended has not been shown by either party, though both have referred to it in their requests, nor has the ground of the decision been made a matter of evidence. As the facts, however, are well known, and were alluded to by counsel on both sides in the argument, we assume, for the purposes of this decision, that the suit in the United States courts was decided against Elgee under the decision of the Supreme Court in Mrs. Alexander's case (2 Wall. R., 404), viz., that the only and proper remedy for the owner of captured property was a suit for the proceeds in the Court of Claims, which court alone had full and complete jurisdiction of the matter. Accordingly the representatives of Elgee, he having died, brought their suit in this court on the 30th
26 March, 1868, to recover the whole of the proceeds in the Treasury, and the litigation which was to determine the rights of Elgee, the rights of the Government, and the rights of all other parties claiming the cotton or its avails, proceeded in this court.

It is not necessary for the purposes of this decision to hold that the present claimant acquired by his ratified agreement an interest or special property in the cotton which constituted him an owner within the meaning of the abandoned or captured property act, although the decision of the supreme court in Villalonga's case (23 Wall. R., 35), holding that a factor's lien was a special property upon which the factor could maintain a suit as owner for his interest in the proceeds, would go far to justify such a conclusion; but it seems tolerably clear that if the claimant could have maintained any action against the defendants for his interest in captured property or in its proceeds in the Treasury, while such proceeds were the subject of litigation, it must have been a suit under that statute.

Be that as it may, the claimant neglected to bring a suit for his interest in the proceeds, and after the time for bringing such suits had expired he brought his present action upon the contract; that is to say, a personal action against the United States for their alleged non-fulfillment of the contract. It seems manifest that when the action was brought, at a time when the owner's litigation was still pending and undetermined, the defendants were not bound to comply with the claimant's demand, and were in no sense guilty of a breach of their agreement. They were simply the custodians of a fund in litigation, of which he claimed a part.

Nevertheless, the defendants, as parties litigant in this court, made an attempt to have the claimant Camp interplead with the other claimants seeking the fund. He resisted the motion and it was overruled (5 C. Cls. R., 645), but the court when denying it said:

The suit of Camp is in effect an action brought against trustees for services rendered to the trust estate. * * * Camp has brought his action before the trust estate is actually closed, though not within the two years prescribed by law for closing it, and it may be that he has a good and valid claim against the trust estate. The trustees should not be required to pay over all the proceeds to the *cestui que* trust and then be personally liable to Camp; nor should

Camp be left without redress, if his claim be valid and his suit be not barred.

It is perhaps needless to add that this opinion does not adjudicate either case upon its own merits, but merely deals with them as they appear upon this motion.

The motion to interplead must be denied. But when the case of Woodruff shall be tried, if it shall then appear that this case of Camp is still pending, proceedings upon the judgment will be stayed, or a decree directing payment of a part of the proceeds will be rendered, with leave to apply for an order directing the payment of the residue, if any, when the estate shall be finally closed.

Neither the defendants nor the claimant Camp availed themselves of the remedy indicated when the consolidated cases of Woodruff and Elgee were tried. No motion was made to stay proceedings upon the judgment or to withhold payment of a portion sufficient to meet this demand. On the contrary, the case went to the Supreme Court, remained pending there for several years before a final decision was reached, and during all of these years the claimant remained inactive, neither bringing his present suit to trial nor taking steps to arrest the paying away of the fund in which he claimed an interest.

But the case must be adjudged as of the time when the claimant brought his action. He has not sued for acts or negligences which may have occurred since then. His cause of action is that which existed on that day, and upon that day we think it clear no breach had been committed by the defendants which could give foundation to this suit.

The judgment of the court is that the claimant's petition be dismissed.

27 IX. *Final Judgment of the Court.*

At a court of claims held in the city of Washington on the 7th day of June, A. D. 1880, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the defendants, and do order, adjudge, and decree that the petition of the claimant, Benjamin F. Camp, be dismissed.

28 X. *Application for and Allowance of Appeal.*

And now comes the said claimant and moves that an appeal be allowed to the Supreme Court of the United States from the judgment of this court.

BENJ. F. CAMP,
By C. F. PECK,
His Attorney.

Filed June 8, 1880.

At chambers. Allowed.

C. D. DRAKE,
Chief Justice.

29 In the Court of Claims.

BENJAMIN F. CAMP
versus
THE UNITED STATES. } No. 5934.

I, John Randolph, assistant clerk of the court of claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the opinion of the court, and concurring opinion on a motion to interplead with sundry other causes, of the findings of fact by the court and the conclusion of law thereon, of the opinion of the court delivered June 7, 1880, of the final judgment of the court, of the application by the claimant for allowance of appeal to the Supreme Court of the United States, and the allowance of same by Chief Justice Drake.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Washington, this 29th day of November, A. D. 1881.

[SEAL]

JOHN RANDOLPH,
Ass't Clerk, Court of Claims.

Endorsed on cover: Court of Claims. No. 183. Benjamin F. Camp, appellant, *vs.* The United States. Filed 15th February, 1882.

113-648

Supreme Court of the United States.

OCTOBER TERM, 1884.

BENJAMIN F. CAMP, *Appellant,*
vs.
THE UNITED STATES. } No. 183.

BRIEF FOR APPELLANT.

BENJ. F. BUTLER,
O. D. BARRETT,
Counsel for Appellant.

WASHINGTON.
GIBSON BROS., PRINTERS AND BOOKBINDERS.
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WASHINGTON.
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1885.

Supreme Court of the United States.

October Term, 1884.

BENJAMIN F. CAMP,
APPELLANT,
vs.
THE UNITED STATES.

No. 183.

Brief for Appellant.

This action was brought to enforce the payment of a balance due the plaintiff by the United States on a contract performed in full on the part of the plaintiff and in part by the United States.

The facts of the case are as follows:

During the months of January, February, March, and April, 1864, Ralph S. Hart was the assistant special agent of the Treasury Department for the District of Natchez, in the State of Mississippi, and as such agent he entered into a verbal contract with the plaintiff, on or about the first of April of said year, by the terms of which the plaintiff was to seize, bring to Natchez, and turn over to the Government, through its agent at that place, a quantity of cotton then stored on Buffalo bayou, in said district, belonging to John K. Elgee, who had voluntarily aided and abetted the late rebellion against the United States, in consideration of twenty-five per cent. of the proceeds of said cotton, said Hart agreeing to report said arrangement to the Secretary of the Treasury, (R., p. 6,) that being the remuneration ordinarily allowed and paid by the Treasury Department to contractors under the Treasury regu-

lations for collecting and bringing in such property. (F. F. 13, p. 9.)

Thereupon the plaintiff engaged the services of the transport Venango, secured the gunboat Champion as an escort, proceeded to said bayou, within the rebel lines, seized 572 bales of said cotton, transported the same to Natchez, where the same was seized by General Tuttle, in command of the military forces at that place. (R., p. 7.) Thereupon the cotton was forwarded to St. Louis, and there turned over to O. S. Lovell, United States Treasury Agent, against whom said Elgee brought an action of replevin in the State court to recover said cotton. Said action was transferred to the United States Circuit Court for the District of Missouri, in which it was defended by the United States, and judgment obtained for the defendant, which was subsequently affirmed, on writ of error, by the Supreme Court of the United States. (R., p. 8.)

During the pendency of said replevin suit, said cotton was, by stipulation between said Elgee and the United States, sold, the proceeds invested in United States bonds, to be held, with their accruing interest, subject to final judgment in said case, in the same manner and to the same extent that the cotton would have been held had said stipulation and sale not been made, save that said stipulation provided for the payment of certain costs and expenses out of the proceeds of said sale. During the pendency of said replevin suit said Camp presented his claim under said contract to the Secretary of the Treasury, who, with full knowledge of all the facts, recognized the same, and on the 6th day of December, 1865, paid to the plaintiff $30,000 on account, before the determination of said replevin suit, and consequently not out of the proceeds of said cotton, said Camp giving an indemnity bond therefor, in which appears the following recital, to wit:

"The condition of the above obligation is such that, whereas "B. F. Camp has this day received the sum of thirty thousand "dollars, being part of the proceeds of certain cotton, known "as the 'Elgee cotton,' collected and sold as abandoned prop-

"erty, which said cotton was collected for the Government by "said B. F. Camp for an interest therein, and which said sum "of thirty thousand dollars has been delivered to said Camp "as a part of his interest for collecting said cotton; and "whereas diverse claims have been asserted to said cotton and "its proceeds by sundry claimants, and especially by one Miles "Sells, as the administrator of John K. Elgee, deceased.

"Now, if the said Camp shall repay the said sum of thirty "thousand dollars on the demand of the Secretary of the "Treasury of the United States," &c. (R., p. 16.)

William Prescott Smith, holding an interest under said Camp in said cotton proceeds, was, in March, 1866, paid by the Secretary of the Treasury $15,000 on the same terms that payment had been made to Camp as aforesaid, the recitals in the indemnity bond being substantially the same. (R., p. 17.)

On the final determination of said replevin suit, in 1868, in favor of the United States, the balance of the proceeds of said cotton remaining, after paying expenses and reimbursing the Treasury for the $45,000 paid to said Camp and said Smith, were paid and covered into the Treasury, the net amount covered in being $366,170.83. (R., p. 9.)

On the 2d day of May, 1864, said Elgee took the amnesty oath, and soon after died. (R., p. 9.)

Prior to August 20th, 1868, the legal representatives of said Elgee brought suit in the Court of Claims under the abandoned or captured property act, during the pendency of which suit plaintiff brought the present suit. (R., p. 9.)

Under said suit brought by said Elgee's representatives, judgment was obtained against the United States for the proceeds of said cotton by virtue of the amnesty proclamations, and not otherwise; said cotton, as to ownership and condition, being liable to seizure when taken by plaintiff. (R., p. 9.)

FINDING OF LAW BY THE COURT BELOW.

The court below made but one finding of law, and that one is as follows:

"At the time of the bringing of the action the defendants " were guilty of no breach of the claimant's alleged contract, " and his petition should be dismissed." (R., p. 18.)

APPELLANT'S ASSIGNMENT OF ERRORS.

I. The court below erred in its conclusion of law that no breach of the alleged contract had been made, and that the petition should be dismissed.

II. The court below erred in not finding as a conclusion of law that, considering the full performance of the contract by the claimant on his part, the great benefits that accrued to the United States thereby, and the part performance by the Secretary of the Treasury of the defendant's part of said contract, the United States so far ratified and confirmed the same as to entitle the claimant to recover, as on a *quantum meruit*, a sum equal to twenty-five per cent. of the gross proceeds of said cotton.

POLICY OF THE GOVERNMENT IN RELATION TO COTTON AT THE TIME OF THE SEIZURE OF THE ELGEE COTTON BY THE APPELLANT.

It was the avowed policy of our Government during the latter years of the rebellion to seize all cotton found within the enemy's territory, without regard to whether it was owned by loyal citizens or by rebels.

This policy was adopted as a war measure.

I. Because the rebel government relied on creating a scarcity of cotton in the commercial markets of the world as a means to force its recognition by foreign governments.

II. Because that government was permitting a portion of the cotton within its lines to be sent through the blockade and sold for the purpose of supplying itself with munitions of war, the export permits being on condition that one-half of the proceeds thereof should go to that government's agent in London.

III. Because the rebel government was using certain other

portions of said cotton within its lines as a basis by hypothecation for loans to maintain the rebellion.

Hence it became the manifest interest of our Government to use all the means known to legitimate war to supply the commercial world with as much cotton as possible, thereby, in part, removing the temptation from foreign governments to recognize the rebel government.

And it also became the manifest interest of our Government to reduce as much as possible the amount of cotton within the rebel lines, and to make the holding of that reduced amount as precarious as possible, so as to diminish the power of the rebel government to raise funds by its sale, hypothecation, or otherwise.

While the war was still in progress this court used the following language, to wit:

"It is well known that cotton has constituted the chief reli-
" ance of the rebels for means to purchase the munitions of
" war in Europe. It is matter of history that rather than
" permit it to come into the possession of the national troops,
" the rebel government has everywhere devoted it, however
" owned, to destruction. The value of that destroyed at New
" Orleans just before its capture has been estimated at eighty
" millions of dollars. It is in the record before us that on
" this very plantation of Mrs. Alexander one year's crop was
" destroyed in apprehension of an advance of the Union forces.
" The rebels regarded it as one of their main sinews of war;
" and no principle of equity or just policy required, when the
" national occupation itself was precarious, that it should be
" spared from capture and allowed to remain, in case of the
" withdrawal of the Union troops, an element of strength to
" the rebellion."

Alexander's cotton, 2 Wall., p. 420.

This policy accomplished a two-fold purpose: it deprived the enemy of the power to use the cotton, and so far weakened him, and it tended to appease the cotton famine which was distressing our own people and neutral nations.

The act of March 12, 1863, confirmed this policy, and in

order to make sure that the indiscriminate seizures dictated by it should not bear hardly upon loyal men in the South, it provided that the proceeds of their cotton should be returned to them upon application, after making the requisite proof.

This act did not undertake to limit seizures to the property of disloyal persons, but it was based upon the assumption that all such property should be taken, no matter to whom it belonged. Public policy demanded that the peculiar products of the Southern States should be put upon the market. The right of loyal owners to the proceeds of their property was distinctly provided for in the statute; and as to all others, the United States reserved the right to confiscate or to pardon and restore, as should seem best calculated to renew political relations between the two sections.

The undoubted fact with which we have to deal is that this and all other cotton was to be got out and sold, no matter to whom it belonged.

At more than one of the conventions of the States which pretended to sever their relations with the United States it had been proclaimed that no blockade of the Southern ports would be possible, because, as they alleged, a stoppage of the cotton supply for six months would bring foreign fleets to their assistance.

A large part of the elaborate system of Treasury regulations and Treasury agents was directed to this end, and private enterprise was invoked to aid the Government officials by providing expressly for contracts to secure the delivery of such cotton.

The plaintiff's contract was made in accordance with the spirit of the policy of our Government at that time, and it was fully and satisfactorily performed by the plaintiff on his part.

The Government received all the benefit from its performance which it could have received had the contract been made as closely within the regulations of the Treasury Department

in that behalf as it was within the spirit of the policy of the Government which gave birth to said Treasury regulations.

BENEFITS ACCRUED TO THE GOVERNMENT UNDER SAID CONTRACT.

The benefit which the Government received from the performance by the plaintiff of his part of said contract is not to be measured by the amount of money that finally found its way into the Treasury of the United States by reason of the seizure of said cotton. But another, and a more important element to be considered in estimating the benefits derived by the United States from the seizure of said cotton, is the fact that it was seized a full year before the war of the rebellion ceased its raging, and possibly its seizure diminished the resources of the rebellion, and thereby shortened its duration. The amount of the cotton seized was 572 bales. This was a part of a lot of 2,200 bales, (V. 2d findings of fact,) and the part not seized, as a matter of history, we know was burned. The 572 sold for about $666 per bale. (R., p. 9.) The entire lot was therefore worth nearly $1,500,000, sufficient to have paid the expenses of the rebel government several days; and if the seizure shortened the rebellion by a single day, our Government was saved at least a million of dollars, as each day's expenses of the war exceeded that sum.

THE CONTRACT BETWEEN THE CLAIMANT AND ASSISTANT SPECIAL AGENT HART.

It is not disputed that this contract was made and performed by the claimant, on his part, in good faith, nor that the United States received and appropriated the benefits thereof.

There was no statute prohibiting the contract being made by the agent Hart, and being verbal and not in writing. It was defective, in that it was not in writing, and in that it was not made by an agent whose agency was one grade higher than that of Hart's; but it was the regulations of the Secretary of the Treasury, and not the provisions of the statute under which the Secretary issued his regulations, that required the

contract to be in writing, and to be made by the special agent and not by the assistant special agent.

As the Secretary prescribed those regulations, he could modify them and he could waive them. And the rule of law is that a contract, defective by reason of matters that could have been waived at the time of its making, can be subsequently ratified by him, who could have authorized it to be made as it was made, and by the party who made it; and especially could this be done by the Secretary while accepting for the Government the benefits accruing to the United States under it.

And the claimant maintains that the facts found by the court below show that the contract in question was ratified by the Secretary of the Treasury.

His acts in relation thereto are as follows:

I. The cotton was received from Camp and turned over to the special agent for the Treasury Department at St. Louis.

II. The Treasury Department assumed the defense of a suit of replevin brought by the rebel owner to recover said cotton from said Treasury agent.

III. The Secretary of the Treasury entered into a stipulation for the sale of said cotton, and the investment of the proceeds in bonds of the United States, to abide the result of said replevin suit, the bonds taking the place of the cotton.

IV. During the pendency of said suit, and before any of the proceeds of said cotton reached the Treasury of the United States, the Secretary of the Treasury paid to the plaintiff a part of the consideration to which he was entitled under the contract.

V. Said replevin suit having been decided in favor of the United States, the Secretary of the Treasury received the balance of the proceeds of said bonds into the Treasury of the United States, after paying therefrom certain costs and expenses and reimbursing the Treasury for the forty-five thousand dollars previously paid to the plaintiff and Smith.

These acts show a part performance by the Secretary of the

Treasury of his part of the contract done with a full knowledge of all of the facts in the case, and done after the plaintiff had performed his part in full, thus showing at least a ratification of the contract in part.

If the contract was ratified in part such partial ratification made it in law a ratification in full.

Parsons says: "An adoption of the agency in part adopts it " in the whole, because a principal is not permitted to accept " and confirm so much of a contract purporting to be his " agent's as he shall think beneficial to himself, and reject " the remainder." (1 Parsons on Contracts, 51.)

In the case of Benedict *vs.* Smith, Chancellor Walworth said:

" But where one person assumes to act as the agent of an- " other, without authority, the person for whom he assumes to " act cannot claim the benefit of his agency in part only, and " reject it as to the residue of the transaction." (10 Paige, p. 180.)

A ratified contract is, if such a thing can be, more binding than one made by authority given beforehand.

Chief Justice Best, in the case of MacLean *vs.* Dunn, 4 Bingham, 722, says: " Where the authority is given before- " hand the party must trust to his agent; if it be given sub- " sequently to the contract, the party knows that all has been " done according to his wishes."

The cases above referred to are ratifications by individuals. The effect of ratification by agents of a government is fully discussed in the case of Dellafield *vs.* The State of Illinois, 26 Wendell, p. 224. In this case it was held that the contract had not been ratified on the part of the State solely on the ground that the contract had not been made in conformity to the statute, and consequently that it did not lay in the power of the officers of the State to make by subsequent ratification a contract binding which none of them had authority to make or to authorize to be made in the first instance.

The court held that the Legislature alone could ratify a contract made not in conformity with the statute. This decision is in perfect harmony with our position in this case. The Legislature made the law, and consequently had power to ratify a contract made not in accordance with the law. In our case the Secretary made the regulations under which the contract was made, but not in accordance with the same. He, like the Legislature, could, therefore, ratify by subsequent action such contract.

The court below in its opinion says: "If this had been an "ordinary transaction between men, unquestionably the ac- "ceptance of the cotton which the claimant brought out, fol- "lowed by the payment on account thereof, and for an inter- "est therein by the Secretary of the Treasury, would have "been a ratification of the unauthorized agreement of the "clearest and most unequivocal character."

The later reports of this court are bristling with decisions in which the Government in its dealings with citizens is held to the same rules of justice and equity which govern in all controversies between man and man.

The case of Solomon *vs.* The United States, 19 Wall., 16, arose out of a contract bearing date July 28, 1864, to deliver twelve thousand bushels of corn, nine thousand before the first of January and the remaining three thousand bushels before the first day of May, 1865. The nine thousand bushels were delivered according to contract, the remaining three thousand bushels were not delivered until the fifteenth of October, 1865. The Government used a part of said three thousand bushels and permitted the other part to decay by reason of the defective and leaky condition of the storehouse in which it was placed. Mr. Justice Miller delivered the opinion of the court; it is as follows:

"Whether we regard the delivery made in October as made "under a verbal extension of the time stipulated in the origi- "nal contract or consider it as a new transaction in which the "Government received and took possession of the corn, and

" used part of it and permitted the remainder to be injured in " its hands, we think the claimant is equally entitled to be " paid for it.

" The act of 1862 requiring contracts for military supplies " to be in writing is not infringed by the proper officer having " charge of such matter accepting delivery of such supplies " after the day stipulated, nor is a verbal agreement to extend " the time of performance invalid.

"And if this were not so, when the quartermaster in charge " receives of a person corn for the Government, gives a receipt " and voucher for the amount and the price, and the Govern- " ment uses such part of it as it wants, and suffers the remainder " to decay by exposure and neglect, there is an implied contract " to pay the value of such corn, which value may, in the ab- " sence of other testimony, be presumed to be the price fixed " in the voucher by the quartermaster."

The decision of this Court in the case of the United States *vs.* The Great Falls Manufacturing Company, made at the present term, is applicable in principle to the present case.

In the Great Falls case the United States took private property for public use, in which the Government claimed no right at the time of the taking of the same, and it took it in an irregular way, and not under the proceedings for its condemnation provided by statute. The company waived the tort, and brought its action.

In the present case the Government availed itself of the labor and skill of the plaintiff and of the money expended by him in performing his part of the contract. This is a taking of private property for public use in which " the Government did not assert title in itself * * * at the time it was taken," the Government claiming no right to the plaintiff's services nor to his money expended in that behalf.

As the takings in the two cases were private property for public use the decision in the Great Falls case shows what the decision must be in this case; that is, it shows that the Government is bound to pay the claimant the fair value of the services rendered and moneys expended.

COMPENSATION TO WHICH PLAINTIFF IS ENTITLED.

The price agreed upon by the parties in the absence of other evidence is presumed to be the reasonable value of the services.

Salomon *vs.* The U. S., 19 Wall. R., p. 17.
Clark *vs.* The U. S., 95 U. S. R., p. 543.

THE ACTS OF THE GOVERNMENT BIND IT AS ON AN IMPLIED CONTRACT.

But if it should be held that those acts did not amount to a ratification of said contract, it would leave the case to be governed by Clark's case, 95 U. S., 539. Here was an oral contract made in the face of the statute which required such a contract to be in writing. The statute reads as follows: "That "it shall be the duty of the Secretary of War, of the Secre- "tary of the Navy, and of the Secretary of the Interior, im- "mediately after the passage of this act, to cause and require "every contract made by them severally on behalf of the "Government, or by their officers under them appointed to "make such contracts, to be reduced to writing and signed by "the contracting parties with their names at the end thereof." (12 Stat., 411.)

This statute has been declared mandatory by the Court of Claims and by this Court.

Mr. Justice Bradley, in delivering the opinion of the Court in said case, says: "The Court of Claims has heretofore held "the act to be mandatory and as requiring all contracts made "with the Department's name to be in conformity with it. "The arguments by which this view has been enforced by the "Court are of great weight, and in our judgment conclusive."

But notwithstanding the fact that the law was mandatory, the Court held that the oral contract in question, so far as it had been performed, was binding. The language of the Court is as follows:

"We do not mean to say that where a parol contract has

" been wholly or partially executed and performed on one " side, the party performing will not be entitled to recover the " fair value of his property or services. On the contrary, we " think that he will be entitled to recover such value as upon " an implied contract for a *quantum meruit*."

The present case is stronger than the Clark case, in that there was a part performance of the contract in question by the United States, said performance occurring after the complete performance by the plaintiff of his part of the contract.

The case of Neal *vs.* The United States, 14 Court of Claims, 280, was based upon a contract invalid as an executory contract, but being performed in part by the claimant and by the United States, the Court of Claims held it to have been completely ratified by the acts of the parties.

THE OPINION OF THE COURT OF CLAIMS IN THIS CASE.

The attention of the Court is called to the opinion of the Court of Claims, (R., p. 18.)

The first paragraph is as follows: " Under the regulations " of the Treasury concerning abandoned or captured property, " and the decisions of the Supreme Court in Whiteside's case, " (93 U. S. R., 247,) the arrangement between the Treasury " agent and the claimant, by virtue of which the seizure of the " Elgee cotton was made, was utterly void. This was conceded " by the claimant's counsel on the hearing, and need not be " discussed."

If the seizure of the cotton was by *virtue* of the contract, the contract was not " utterly" void, and the learned judge is simply mistaken. Whiteside's case and the present case are " utterly" different. In Whiteside's case no service was done for the United States, nor did any benefit, mediate or immediate, accrue to the United States. The claim was for certain expenses in hauling and baling certain cotton, in December, 1865, months after the surrender of the last rebel army, and these expenses were incurred on cotton taken away from the claimant by the arbitrary and illegal act of a military officer.

There was a written contract by the Treasury agent, but that was signed more than four months after the work and labor had been done, and, by its terms, gave to the claimant fifty per cent. of the cotton for his services, while the Treasury regulations expressly forbid the giving of more than twenty-five per cent. The case finds that the cotton was neither seized nor released by the United States, and therefore the Court held that services rendered under a contract executed by an unauthorized agent, after the services had been performed, and a contract never approved by any competent authority, created no equity unless it appeared that the services performed resulted in some benefit to the party for whom they were rendered. (*Ibid.*, 256.)

For this doctrine we contend. Our case is the exact opposite in every feature. While the war was raging, in April, 1868, under a contract previously made with a Treasury agent, which he promised to report to the Secretary of the Treasury, and which he was bound to report by the Treasury regulations, the claimant undertook to seize a lot of cotton, consisting of twenty-two hundred bales, from within the rebel lines, and bring the same within the Union lines. He did bring out five hundred and seventy-two bales, and the balance was burned by the rebels. The five hundred and seventy-two bales were sold in St. Louis at about six hundred and sixty-six dollars per bale, the gross amount being $381,428.

This exploit cost the rebels, reckoning the entire lot at the same rate, nearly one and a half millions of dollars, or nearly one-seventh of the amount of the famous ten million cotton loan, the last one made by the Confederacy.

Was this exploit of no service to the United States and of no value in crippling the rebellion?

The $381, 428 for which the five hundred and seventy-two bales were sold was covered into the Treasury.

The matter was immediately referred to Mellen, and he sent his agent to take possession of the cotton. The owner, Elgee, brings his suit against said agent to recover possession of the

cotton; the United States defend the suit, and after obtaining a final judgment in their favor in the replevin suit in the circuit court of the United States for the district of Missouri, and when all of the facts in relation to the matter must have been known, the Secretary of the Treasury, who might have made the contract as Hart made it, and had power to ratify the contract that Hart did make, paid forty-five thousand dollars to Camp and his associate, Smith, on account of the service rendered by Camp, and in making those payments exacted bonds prescribed under the same Treasury regulations which Hart or Mellen would have been bound to require in case payment had been made to Camp through them, or either of them.

Here, then, is a case where an immense advantage accrued to the United States in weakening the rebellion; a very great advantage accrued to the United States in placing a large sum of money in its Treasury at a time when money, or even the use of money, was of the utmost importance, and a case in which the assistant agent of the Treasury makes a contract, and the Secretary of the Treasury takes it upon himself to carry it out in part, taking the bond and paying a portion of the price agreed on.

The court below give the following as their conculsion of law: "At the time of the bringing of this action the defend-
"ants were guilty of no breach of the claimant's alleged
"contract, and his petition should be dismissed;" and in the opinion say: "It seems manifest that when the action was
"brought, at a time when the owner's litigation was still pend-
"ing and undetermined, the defendants were not bound to
"comply with the claimant's demand, and were in no sense
"guilty of a breach of their agreement. They were simply
"the custodians of the fund in litigation of which he claimed
"a part." (R. p. 22.) All of this grows out of a gross misapprehension of the regulations of the Treasury Department under which the cotton was collected, sold, and the proceeds paid into the Treasury subject to the claim of the owner on

proving certain facts which would entitle him to the return of the money. The assumption by the Court of Claims is, that if the owner of the cotton proved his loyalty and showed himself entitled to a return of a part of the proceeds of the cotton from the Treasury Department, the contractor who had agreed to seize and deliver to the Government agents the cotton would be entitled to no portion of the proceeds of the sale thereof.

Under section 12 of the regulations under which this cotton was seized it was competent for the special supervising agent to contract to give twenty-five per cent. of the proceeds of the cotton for the services rendered by Camp in relation to the cotton in question. It was then competent for him to sell the cotton without regard to its ownership, and out of the proceeds to pay the twenty-five per cent. to the contractor, and to pay other expenses necessarily incurred, and to turn into the Treasury only the balance remaining, and this balance was all that the owner, under the most favorable circumstances, was entitled to receive from the Treasury, and this without interest. Note the fact that the contractor was required to give no bond whatever until he should receive his share of the proceeds. The language of the regulation is, "Before payment to any "contractor under any contract made in pursuance with these "regulations he shall execute a bond with penalty equal to the "amount stipulated to be paid to him," &c., and that the bond contained no clause indemnifying the United States against the claims of the owner, as such, of the cotton, but the indemnity was "on account of damages by trespass, or otherwise, occasioned by the act or connivance of the contractor, "and against all claims that may arise on account of expenses "incurred in the collection, preparation, and transportation of "property to the points designated in said contract."

Now under the law and under the Treasury regulations Elgee's claim was limited to the $381,428 for which the cotton sold, minus twenty-five per cent. of the same, and minus all other expenses necessarily incurred in relation to it, and this without interest. The law and the Treasury regulations made

an absolute partition between the claims of the owner and the per centage of the contractor, and as soon as the cotton was sold the United States became indebted to the contractor for his share, which was usually paid by the agent, and its trusteeship was limited solely and exclusively to that part of the proceeds which, under the law, the owner could recover from the Treasury on proving his loyalty. And the amnesty proclamations were certainly never intended to give rebels greater rights than the law provided for owners of cotton who were loyal at the time of the seizure, and who had no possible need of amnesty. If the Government saw fit to pay over to Elgee's representatives a sum of money greatly in excess to what they were entitled under the amnesty proclamation, it is no reason why they should not pay the appellant the amount due him under his contract ratified by the Secretary of the Treasury.

But even assuming that Camp's interest in the proceeds of the cotton was as a joint beneficiary with Elgee, how would the case stand ?

Elgee brought his suit to recover the cotton, bringing it in the State court, and after its removal to the U. S. circuit court, prosecuting it there.

The defendant pleaded in abatement that he held the cotton as agent for the U. S. under the abandoned property act of March 12th, 1863, "and that whatever claim, if any, the said "plaintiff may have to said property, is properly cognizable "in, and should be presented and prosecuted in, the Court of "Claims of the United States, and not in this Court; and this "the said defendant is ready to verify." (*V.* copy of record in this Court.)

To this plea the plaintiff demurred, and the Court sustained the demurrer.

Elgee, thus warned of the danger of proceeding further in that court, still persisted in prosecuting his suit therein. The defendants then, among other pleas, filed a special plea in bar, setting up all the facts in the case. The plaintiff replies, setting up his title to the cotton and his restored rights under the

President's proclamation of pardon and restoration of property rights. To this the defendants demur; the demurrer is sustained; the plaintiff refuses to plead over or say more, and final judgment is entered in favor of the United States. (*V.* Elgee's Administrator *vs.* Lovell, 1 Woolford, 102.) And the judgment so rendered was by this Court affirmed, with costs, on the 27th day of January, 1868, more than a year before the present suit was brought.

Now suppose the circuit court had not jurisdiction, still its judgment is good till set aside. It has never been set aside; but on the contrary it has been affirmed. And the plea interposed in bar of the plaintiff's right and sustained forever barred all the plaintiff's claims to the property in question, and then the claim, that if Camp had any rights in the proceeds of said cotton they were tied up with the claims of the plaintiff in the replevin suit, fell to the ground. The claims of Elgee's representatives were forever extinguished.

If the United States subsequently saw fit to make a present of a large sum of money to Elgee's representatives through the form of a suit, in which they refused through their officers to plead the former judgment, Camp is not to blame nor responsible, nor ought he to suffer in consequence.

BENJ. F. BUTLER,
O. D. BARRETT,
Counsel for Appellant.

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In the Supreme Court of the United States.

OCTOBER TERM, 1884.

BENJAMIN F. CAMP, APPELLANT,
vs.
THE UNITED STATES.
} No. 183.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

BENJAMIN F. CAMP, APPELLANT,
vs.
THE UNITED STATES.
No. 183.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

The appellant demands judgment for $80,000 in recompense of services in securing a certain lot of cotton known as the Elgee cotton, in Mississippi, in the spring of 1864, which was liable to seizure under the captured or abandoned property act.

Shortly before the seizure the appellant had a verbal understanding with one Ralph S. Hart, the assistant special Treasury agent of the district of Natchez, Miss., to the effect that the appellant should bring out the cotton in question and turn it over to the Government through the agent in Natchez. (Finding III, p. 6.)

This being done, the appellant was to make known his

understanding with Hart to the Secretary of the Treasury, and to represent to the Secretary that Hart had assured the appellant that the Secretary would allow "25 per cent. *of the proceeds of the cotton, at least.*" (Finding III, p. 6.)

The cotton was forwarded to St. Louis, where it was replevied by Elgee, under process sued out of a State court, but the litigation thus begun was removed from the State court to the United States circuit court for the district of Missouri (Findings VII, VIII, p. 8), where a judgment was rendered for the defendant, which was affirmed in this court. Pending this litigation the cotton in dispute was sold by stipulation between the parties to the suit (pp. 14–16), and the net amount of proceeds ultimately deposited in the Treasury was $366,170.83.

But this judgment did not give a *quietus* to litigation touching the said cotton, for not only Elgee, or rather his personal representative—for Elgee had in the meanwhile died—but others, including the appellant, Camp, afterwards filed petitions in the Court of Claims, all of them except Camp, whose demand was for services in and about the seizure of the cotton, claiming interests in the proceeds of the said cotton, some of them, indeed, claiming the whole proceeds under alleged sales from Elgee at various times.

In the course of this manifold litigation in the Court of Claims the counsel for the United States moved that court to consolidate the appellant Camp's case with the other pending cases involving the said cotton and to pass an order requiring the appellant "to interplead with the claimants in the other cases" * * * "all said claims

being upon the same identical moneys and fund and conflicting" (R., p. 4).

But the motion was denied on the ground that the appellant did not claim to be a *cestui que trust* as to any part of the fund, the Government standing merely in the relation of a *contractor* as to him (R., pp. 4, 5, 6).

The several causes involving title to the cotton finally resulted in a judgment of this court, awarding the whole fund, less costs, expenses, &c., to the representatives of Elgee (22 Wall., p. 180, The Elgee Cotton Cases).

This appellant knew, as he well did, or as he must be conclusively presumed to know, that whatever claim he had against the Government was against it as *trustee* of the proceeds of the Elgee cotton, and must be satisfied out of those proceeds *or not at all*, and that, in no case, could any executive act transfer his demand from the special fund to the monies generally in the Treasury.

Yet in the face of this, the appellant, with a supineness quite inexplicable upon the case presented, allowed the fund to be adjudged and paid to the representatives of Elgee, to say nothing of his failure to file his petition within the limitation prescribed by law, without intervening in the case and asking that a sufficient amount of the fund might be retained by the trustee, the Government, to meet his claim should it be adjudged valid; and surely his omission to do so can be no warrant for a judgment *de bonis propriis* against the Government, *the trustee*, especially as the judgment in favor of Elgee's estate and the payment of the fund to it all took place *after the appellant's petition was filed*, and therefore should make no figure in the present litigation.